

## **REMARKS**

### **Rejection under 35 U.S.C §102**

*East et al. (5,794,908)*

The Examiner has rejected claims 1 and 7-11 under 35 U.S.C. §102(b) as being anticipated by East et al. According to the Examiner, East et al. disclose a wheelchair docking system for releasably securing a wheelchair to the floor of a vehicular conveyance, comprising: support frame 18, 118, 19 adapted for rigid attachment to said wheelchair; docking shoe 48, adapted for rigid attachment to either one of said support frame and said floor; anchor 13, adapted for rigid attachment to the other of said support frame and said floor; and arm 46 adapted, when in operative position, for rigid mounting in a vertical plane on said anchor and adapted for sliding and locking engagement in said docking shoe means. The Applicants respectfully traverse the Examiner's rejection.

The Applicants submit that East et al. discloses a plug 46 attached to the pivot assembly 4, 104, being freely manoeuvrable about a socket base 48 for a *360 degree* rotation of movement of the T-shaped bar mechanism 12 that has adjustable sleeves 14 allowing for free vertical and horizontal movement.

By contrast, one of the objectives of the inventions claimed in this application is to secure a wheelchair to a vehicular conveyance so that rotational movement is prevented. Accordingly, claim 1 specifies that the docking shoe is adapted for "*rigid attachment* to either one of said support frame..." (emphasis added). The rigid attachment of the "docking shoe" is necessary so as to retain the wheelchair in a fixed position as opposed to allowing rotational movement as is provided for in East et al.

In view of the above arguments, the Applicants submit that claim 1 is novel and respectfully request removal of the Examiner's rejection.

Furthermore, the objections to claims 7, 8 and 9 have been rendered moot in view of the arguments presented with respect to claim 1.

The Examiner alleges that claim 10 inherently includes the features of East et al. However, the Applicants submit that since claim 10 contains the same features as claim 1, it is also novel in view of East et al. Also claim 11 depends from claim 10 and therefore is not anticipated by East et al.

*Constantin (4,690,364)*

The Examiner has rejected claims 1, 7, and 10-12 as being anticipated by Constantin. According to the Examiner, Constantin discloses a wheelchair docking system for releasably securing a wheelchair to the floor of a vehicular conveyance, comprising: support frame 24a, 24b adapted for rigid attachment to said wheelchair; docking shoe 5, 8, 9, 10 adapted for rigid attachment to either one of said support frame and said floor; anchor 35 adapted for rigid attachment to the other of said support frame and said floor; and arm 3 adapted, when in operative position, for rigid mounting in a vertical plane on said anchor and adapted for sliding and locking engagement in said docking shoe. The Applicants respectfully traverse the Examiner's rejection.

Constantin discloses a vertical member 3 of an attaching assembly 2 which is fixedly attached to bar 24 to extend perpendicular downward from a wheelchair 4. The vertical member 3 has a circular cross section to allow the wheelchair 4 *to rotate*.

By contrast, claim 1 of the subject application discloses a "...docking shoe means, adapted for rigid attachment to either one of said support frame..." The rotation of the vertical member 3 as found in Constantin is not an option for the present invention as claimed as it will encourage excessive movement during hard braking of the vehicular conveyance or due to an accident, thereby possibly leading to the wheelchair occupant being displaced from the

wheelchair. Similarly, claim 10 also does not allow for rotation of the wheelchair and specifies a method of rigidly securing the wheelchair.

In view of the above arguments claims 1 and 10, including claims which depend therefrom (claims 7, 11 and 12), are novel in view of Constantine and removal of the rejection is respectfully requested.

### **Rejection under 35 U.S.C §103**

*Budd et al.(6,352,396) and Constantin (4,690,364)*

The Examiner alleges that claims 2-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Constantin in view of Budd et al. In particular, the Examiner indicates that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the spring loaded wedge as taught by Budd et al. for the docking shoe of Constantin in order to secure the arm in place to hold the wheelchair. The Applicants respectfully traverse the Examiner's rejection.

Budd et al. employ a moveable docking device set on a length of track, which, in turn, is bolted to the floor of a vehicle. The docking shoe moves relative to the length of the track, which allows the occupant to move the wheelchair to a desired lateral position. The laterally positioned spring 92 in Budd et al. is provided to assist in the acceptance of the semi-circular recessions 88 extending outside of the lockdown apparatus 1 to attach said semicircular recessions 88 to the stopping posts 74 fixed to the length of the track. Locking members 5 and 6 move in unison (not shown) with each toothed portion 90. By contrast, according to claim 2, the docking includes spring loaded wedge adapted to releasably *lock* the arm in the docking shoe. By locking the arm in the docking shoe in a single step, the wheelchair is prevented from moving relative to the vehicular conveyance. Thus, the Applicants submit that claim 2 and claims that depend therefrom, including claims 3, 5 and 6, are non-obvious in view of Constantin and Budd.

Furthermore, there would be no motivation to combine Constantin and Budd as both disclose docking devices that allow for movement of the wheelchair with respect to the vehicular conveyance. By contrast, the invention as claimed in claim 1 specifies that the wheelchair is rigidly attached to the vehicular conveyance.

In view of these arguments, it is respectfully requested that the objection of the Examiner is removed.

*Constantin (4,690,364)*

The Examiner has rejected claim 4 under 35 U.S.C §103 as being unpatentable over Constantin, as modified. Specifically, the Examiner indicates that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the lever being manually operated as taught by Constantin in order to accommodate a wheelchair in the event of an electrical failure. The Applicants respectfully traverse the Examiner's rejection.

If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification (see *re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) and MPEP 2143.01).

As set out above, the objective of the present invention is to secure a wheelchair to a vehicular conveyance so that rotational movement is prevented. Accordingly, claim 1 specifies that the docking shoe is adapted for "rigid attachment to either one of said support frame..." (emphasis added). The Applicants submit that if Constantin were modified to include a rigid attachment to the vehicular conveyance, then the objective of the cited reference, which is to provide for rotation of the wheelchair, would not be achieved. Accordingly, it would not have been obvious to modify the reference so that rotation is prevented. Based on this lack of motivation to modify the reference, the Applicants submit that claim 1 is non-obvious. Since

claim 1 is non-obvious, it is submitted that claim 4, which includes the limitations of claim 1, is also non-obvious. Thus, removal of the rejection is respectfully requested.

The cancellation of claims 8-10 obviates the need for new drawings. However, applicant's cancellation of those claims is not intended to be an indication that applicant agrees with the position of the Examiner in the objection to the drawings, as stated on page 2 of the Office Action.

The claims have been amended to delete use of the term "means". This has been done to avoid any construction of the claims under 35 U.S.C. § 112, ¶ 6.

For the foregoing reasons, the Applicants believe that the claims are sufficiently distinguished from the prior art and are in condition for allowance.

The Applicant believes that fees are due in connection with this application as follows:

- The number of independent claims is now 4, which is an additional 1 independent claim for a cost of \$100.00;
- The total number of claims (including cancellation of claims 8-10) is now 20, which is an additional 10 claims over the limit of 20 for a cost of  $10 \times \$25 = \$250.00$ .
- A one-month extension of time is requested, at a cost of 60.00.

You are hereby authorized to deduct the required amounts from our Deposit Account No. 02-0400 (Baker & McKenzie). In the event that the Applicant has miscalculated the fees due, you are also authorized to credit any overpayment or charge any underpayment. When identifying such a withdrawal, please use the Attorney Docket Number QSTR-102.

Please note, this amendment and response is being submitted by the undersigned under Rule 1.34; a power of attorney from the assignee or applicant of the present application will be submitted in due course.

If Examiner has any questions regarding this filing or the application in general, Examiner is invited to contact Applicant's attorney at the below-listed address.

Date: October 11, 2005

Respectfully submitted,



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